IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 2 OF 2001

The Institute of Chartered
Accountants of India,
I.P. Marg, New Delhi .. Petitioner

v/s.

Shri V.C.Agarwal, FCA,
M/s.V.C.Agarwal & Co.,
Chartered Accountants,
H-004, Ground Floor,
Vishal Shopping Centre,
Prakash Studio Compound,Andheri,
Mumbai 400 069. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S. Srikrishna i/by M/s. Kanga & Co. for petitioner.

None for respondent.

Mr.N.D.Salvi for Union of India.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Shri V.C.Agarwal, the Chartered Accountant and the member of Institute of Chartered Accountants of India has been found guilty of professional misconduct by the disciplinary committee within the meaning of clauses 5,6,7 and 8 of part I of second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act. The finding of the professional misconduct recorded against Shri V.C.Agarwal has been accepted by the Council. The Council has recommended to this court that the name of respondent be removed from the register of members

for the period of six months. This is how this reference is before us under section 21(5) of the Chartered Accountants Act, 1949.

2. The Institute of Chartered Accountants of India received the letter from the Assistant Commissioner of Income Tax, Mumbai regarding the assessment proceeding of M/s. Walmek Import and Export Limited for the assessment year 1988-89. In the said letter, it was stated that the books of account of the said assessee was audited by Shri V.C.Agarwal (for short "the respondent") and the regular audit report was also filed by the respondent. On perusal of the bank statement of the assessee, the Assistant Commissioner of Income Tax found that there was cash deposit over Rs.60 lakhs and that the assessee was the hawala broker. A notice was sent by the income-tax authorities to the respondent as to why he made no mention of such irregularities while submitting his report in form 3CD. The respondent was found to have failed to bring attention to the heavy cash sales entered into by the assessee in his audit report submitted in form 3CD in terms of section 44AB of the Income-tax Act, 1961 for the previous year 1987-87. The said letter by the Assistant Commissioner of Income-tax, Mumbai was treated as information and the respondent was called upon to explain. The respondent submitted his written statement. The Council was of the prima facie opinion that the respondent was guilty of professional misconduct and accordingly, referred the case to the

disciplinary committee. Before the disciplinary committee, the respondent did not choose to appear. However, the committee decided to proceed with the matter in the absence of the respondent and recorded evidence of Shri K.N.Khandelwal, Director of M/s. Walmek Imports and Exports Ltd. On the basis of the available material, the disciplinary committee found that the respondent was guilty of professional misconduct within the meaning of clauses 5,6,7 and 8 of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act. The disciplinary committee forwarded its report to the Council. The Council accepted the finding of the disciplinary committee and recommended to this court that the name of the respondent be removed from the register of members for a period of six months.

3. As we have already noticed above, the respondent though filed his written statement but thereafter he did not choose to appear before the disciplinary committee. The written statement filed by the respondent reads thus-

> "This is with reference to your above letter, we state here that we have mentioned all the facts in my previous letter as per your letter dated 13.7.1993. Further, we would like to mention here that the company had not taken any loans other tan mention on Balance Sheet. While auditing the books, we found cash deposit in banks and accordingly we raised the question from client who replied that the said cash was the result of cash sales which was recorded in books. As you know that generally books of accounts are

checked by staff and not by Chartered Accountant but in any case he is responsible for all acts of his assistant.

Anyhow if institute think that I am responsible and have not fulfilled my responsibility properly, I am ready to bear penalty fixed you. I am ready to surrender the practice certificate and I don't want to go in litigation and I want peace of mind as I have recovered from my descease after long time sickness. Once again I request you to please avoid any legal proceedings as I am ready to surrender the certificate of practice to avoid all legal proceedings."

4. It, thus, appears that the respondent did not seriously challenge that the audit of the books of accounts of the assessee M/s. Walmek Imports and Exports Ltd. was not thorough and lacked requisite scrutiny. It is admitted fact by the respondent that while auditing the books, he found cash deposits in banks and raised the question to his client. However he was satisfied with the answer of his client that the said cash was a result of cash sales without going deeper into the aspect. No doubt is left that the respondent as an auditor failed to discharge his duties responsibly and was thus, guilty of professional misconduct. Since we concur with the reasoning of the disciplinary authority, we do not intend to deal with this aspect at length.

5. We, accordingly, confirm the finding of the disciplinary authority and accepted by the Council that the respondent was guilty of professional misconduct within the meaning of clauses 5,6,7 and 8 of para I of second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read

with section 22 of the said Act.

6. The Council has recommended that the name of the respondent be removed from the register of members for a period of six months. The respondent has not appeared before us to show cause why this recommendation be not accepted. From the written statement that we have quoted above, it would be seen that the respondent was even prepared to surrender the practice certificate. Be that as it may, the punishment recommended by the Council is commensurate to the professional misconduct proved against the respondent.

7. We, accordingly, accept the recommendation of the Council and order that the name of the respondent be removed from the register of members for a period of six months. Reference is disposed of accordingly.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)